

ASSEMBLY BILL

No. 320

Introduced by Assembly Member Correa

February 7, 2003

An act to amend Section 1770 of the Civil Code, relating to deceptive practices.

LEGISLATIVE COUNSEL'S DIGEST

AB 320, as introduced, Correa. Deceptive practices: telephone solicitations.

The Consumers Legal Remedies Act prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or which results in, the sale or lease of goods or services to any consumer, as specified. Pursuant to that act, existing law prohibits disseminating an unsolicited prerecorded message to any person by telephone without first informing that person of specified information in an unrecorded, natural voice.

This bill would further prohibit this dissemination to any mechanical or electronic answering device without the prerequisite information, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1770 of the Civil Code is amended to
2 read:
3 1770. (a) The following unfair methods of competition and
4 unfair or deceptive acts or practices undertaken by any person in

- 1 a transaction intended to result or which results in the sale or lease
2 of goods or services to any consumer are unlawful:
- 3 (1) Passing off goods or services as those of another.
 - 4 (2) Misrepresenting the source, sponsorship, approval, or
5 certification of goods or services.
 - 6 (3) Misrepresenting the affiliation, connection, or association
7 with, or certification by, another.
 - 8 (4) Using deceptive representations or designations of
9 geographic origin in connection with goods or services.
 - 10 (5) Representing that goods or services have sponsorship,
11 approval, characteristics, ingredients, uses, benefits, or quantities
12 which they do not have or that a person has a sponsorship,
13 approval, status, affiliation, or connection which he or she does not
14 have.
 - 15 (6) Representing that goods are original or new if they have
16 deteriorated unreasonably or are altered, reconditioned,
17 reclaimed, used, or secondhand.
 - 18 (7) Representing that goods or services are of a particular
19 standard, quality, or grade, or that goods are of a particular style
20 or model, if they are of another.
 - 21 (8) Disparaging the goods, services, or business of another by
22 false or misleading representation of fact.
 - 23 (9) Advertising goods or services with intent not to sell them
24 as advertised.
 - 25 (10) Advertising goods or services with intent not to supply
26 reasonably expectable demand, unless the advertisement discloses
27 a limitation of quantity.
 - 28 (11) Advertising furniture without clearly indicating that it is
29 unassembled if that is the case.
 - 30 (12) Advertising the price of unassembled furniture without
31 clearly indicating the assembled price of that furniture if the same
32 furniture is available assembled from the seller.
 - 33 (13) Making false or misleading statements of fact concerning
34 reasons for, existence of, or amounts of price reductions.
 - 35 (14) Representing that a transaction confers or involves rights,
36 remedies, or obligations which it does not have or involve, or
37 which are prohibited by law.
 - 38 (15) Representing that a part, replacement, or repair service is
39 needed when it is not.



1 (16) Representing that the subject of a transaction has been
2 supplied in accordance with a previous representation when it has
3 not.

4 (17) Representing that the consumer will receive a rebate,
5 discount, or other economic benefit, if the earning of the benefit
6 is contingent on an event to occur subsequent to the consummation
7 of the transaction.

8 (18) Misrepresenting the authority of a salesperson,
9 representative, or agent to negotiate the final terms of a transaction
10 with a consumer.

11 (19) Inserting an unconscionable provision in the contract.

12 (20) (A) Advertising that a product is being offered at a
13 specific price plus a specific percentage of that price unless ~~(1) the~~
14 *both of the following apply*:

15 (i) *The total price is set forth in the advertisement, which may*
16 *include, but is not limited to, shelf tags, displays, and media*
17 *advertising, in a size larger than any other price in that*
18 *advertisement, and (2) the.*

19 (ii) *The specific price plus a specific percentage of that price*
20 *represents a markup from the seller's costs or from the wholesale*
21 *price of the product. This*

22 (B) *This subdivision shall does not apply to in-store advertising*
23 *by businesses which are open only to members or cooperative*
24 *organizations organized pursuant to Division 3 (commencing with*
25 *Section 12000) of Title 1 of the Corporations Code where more*
26 *than 50 percent of purchases are made at the specific price set forth*
27 *in the advertisement.*

28 (21) Selling or leasing goods in violation of Chapter 4
29 (commencing with Section 1797.8) of Title 1.7.

30 (22) (A) Disseminating an unsolicited prerecorded message
31 by telephone without an unrecorded, natural voice first informing
32 the person, *or any mechanical or electronic answering device,*
33 *answering the telephone, of the name of the caller or the*
34 *organization being represented, and either the address or the*
35 *telephone number of the caller, and without obtaining the consent*
36 *of that person to listen to the prerecorded message.*

37 (B) This subdivision does not apply to a message disseminated
38 to a business associate, customer, or other person having an
39 established relationship with the person or organization making

1 the call, to a call for the purpose of collecting an existing
2 obligation, or to any call generated at the request of the recipient.

3 (23) The home solicitation, as defined in subdivision (h) of
4 Section 1761, of a consumer who is a senior citizen where a loan
5 is made encumbering the primary residence of that consumer for
6 the purposes of paying for home improvements and where the
7 transaction is part of a pattern or practice in violation of either
8 subsection (h) or (i) of Section 1639 of Title 15 of the United States
9 Code or subsection (e) of Section 226.32 of Title 12 of the Code
10 of Federal Regulations.

11 A third party ~~shall~~ is not be liable under this subdivision unless
12 ~~(1)~~ there was an agency relationship between the party who
13 engaged in home solicitation and the third party, or ~~(2)~~ the third
14 party had actual knowledge of, or participated in, the unfair or
15 deceptive transaction. A third party who is a holder in due course
16 under a home solicitation transaction ~~shall~~ is not be liable under
17 this subdivision.

18 (b) (1) It is an unfair or deceptive act or practice for a mortgage
19 broker or lender, directly or indirectly, to use a home improvement
20 contractor to negotiate the terms of any loan that is secured,
21 whether in whole or in part, by the residence of the borrower and
22 which is used to finance a home improvement contract or any
23 portion thereof. For purposes of this subdivision, “mortgage
24 broker or lender” includes a finance lender licensed pursuant to
25 the California Finance Lenders Law (Division 9 (commencing
26 with Section 22000) of the Financial Code), a residential mortgage
27 lender licensed pursuant to the California Residential Mortgage
28 Lending Act (Division 20 (commencing with Section 50000) of
29 the Financial Code), or a real estate broker licensed under the Real
30 Estate Law (Division 4 (commencing with Section 10000) of the
31 Business and Professions Code).

32 (2) This section ~~shall~~ may not be construed to either authorize
33 or prohibit a home improvement contractor from referring a
34 consumer to a mortgage broker or lender by this subdivision.
35 However, a home improvement contractor may refer a consumer
36 to a mortgage lender or broker if that referral does not violate
37 Section 7157 of the Business and Professions Code or any other
38 provision of law. A mortgage lender or broker may purchase an
39 executed home improvement contract if that purchase does not
40 violate Section 7157 of the Business and Professions Code or any

1 other provision of law. Nothing in this paragraph shall have any
2 effect on the application of Chapter 1 (commencing with Section
3 1801) of Title 2 to a home improvement transaction or the
4 financing thereof.

O

